1978

Floid C. Hartman and Ruth A. Hartman v. Ora Ann Potter, Husky Oil Co. and Chevron Oil Co. : Brief of Respondent

Utah Supreme Court

Robert G. Pruitt, Jr., and Thomas A. Nelson; Attorneys for Respondent;
Clark R. Nielsen; Attorney for Respondents;
Kenneth M. Hisatake; Attorney for Appellants;

IN THE SUPREME COURT OF THE STATE OF UTAH

FLOID C. HARTMAN and RUTH A. HARTMAN,	)	
Plaintiffs - Appellants,	)	
-vs-	)	Case No. 16004
ORA ANN POTTER, HUSKY OIL COMPANY and CHEVRON OIL COMPANY,	)	
Defendants - Respondents.	)	

BRIEF OF RESPONDENT ORA ANN POTTER

Appeal from the Judgment of the Third District Court
for Salt Lake County
Honorable David K. Winder, District Judge

Robert G. Pruitt, Jr., and
Thomas A. Nelson of
PRUITT & GUSHEE
Suite 875
Beneficial Life Tower
Salt Lake City, Utah 84111
Attorneys for Respondent
Ora Ann Potter

Clark R. Nielsen, Esq.
Nielsen, Henriod, Gottfredson & Peck
410 Newhouse Building
Salt Lake City, Utah 84111
Attorney for Respondents
Chevron Oil Company and
Husky Oil Company

Kenneth M. Hisatake
1825 South Seventh East
Salt Lake City, Utah 84105
Attorney for Appellants

IN THE SUPREME COURT OF THE STATE OF UTAH

FLOID C. HARTMAN and RUTH A. HARTMAN, Plaintiffs - Appellants, -vs- ORA ANN POTTER, HUSKY OIL COMPANY and CHEVRON OIL COMPANY, Defendants - Respondents.	)	Case No. 16004

BRIEF OF RESPONDENT ORA ANN POTTER

Appeal from the Judgment of the Third District Court
for Salt Lake County
Honorable David K. Winder, District Judge

Robert G. Pruitt, Jr., and
Thomas A. Nelson of
PRUITT & GUSHEE
Suite 875
Beneficial Life Tower
Salt Lake City, Utah 84111
Attorneys for Respondent
Ora Ann Potter

Clark R. Nielsen, Esq.
Nielsen, Henriod, Gottfredson & Peck
410 Newhouse Building
Salt Lake City, Utah 84111
Attorney for Respondents
Chevron Oil Company and
Husky Oil Company

Kenneth M. Hisatake
1825 South Seventh East
Salt Lake City, Utah 84105
Attorney for Appellants

TABLE OF CONTENTS

AUTHORITIES CITED

Page

CASES

RULES

STATUTES

IN THE SUPREME COURT OF THE STATE OF UTAH

FLOID C. HARTMAN and RUTH A. HARTMAN, Plaintiffs - Appellants, -vs- ORA ANN POTTER, HUSKY OIL COMPANY and CHEVRON OIL COMPANY, Defendants - Respondents.	)	Case No. 16004

BRIEF OF RESPONDENT ORA ANN POTTER

STATEMENT OF THE CASE

This is an action to quiet title to a partial interest in oil, gas and other mineral rights subject to a reservation of those rights in a deed conveying the surface.

In the Third Judicial District Court in Salt Lake County the case was decided on cross motions for summary judgment by the Honorable David K. Winder, Judge, who quieted title to the disputed mineral interest in Mrs. Ora Ann Potter, Defendant below, herein referred to as Respondent.

On this appeal Respondent seeks to have the decision below affirmed with costs awarded to Respondent.

FACTS

Respondent does not agree with or adopt Appellant's "statement of facts" because Appellants have mixed fact, theory and argument

therein, although to the extent basic facts are asserted Respondent raises no issue thereon. Respondent's Statement of Facts follows:

In July, 1946, William M. Potter conveyed to one C. R. Bennett one-half of the mineral estate of the 160 acre parcel of land which is the subject of this action. Then, in 1951, the same William M. Potter conveyed the surface of the same parcel by a deed containing the following reservation:

> "There is reserved unto the Grantors three-fourths (3/4) of all the oil, gas, and mineral rights to the above land belonging, with the right of ingress and egress thereon for the purpose of finding and producing oil, gas, and minerals thereon."

The deed was prepared by employees of a bank which acted as escrow agent for the transaction. The bank apparently acted under the direction of, and on behalf of, both parties. (Floid C. Hartman Deposition, pp. 11 and 12.) Hartman was present when the deed was prepared and signed in 1951. (Hartman deposition p. 12, line 10).

William M. Potter died and the subject land descended to Ora Ann Potter, Respondent here.

Much later, from approximately 1967 to 1970 both Hartman and Respondent leased mineral interests to various oil companies. Oil was subsequently discovered nearby and a part of the proceeds of the production of that oil was due the owners of the minerals of the subject parcel of land. The portion allocable to one-half of the mineral estate has been paid to Respondent Ora Ann Potter; Appellant Hartman has received no royalties at all.

In 1976 Hartman brought the action on appeal here on the theory that he owns a part of the mineral estate of the parcel as well as the surface. Both parties agreed that there is no genuine issue of material fact and filed cross motions for summary judgment in the court below.[1]

ISSUE

The single issue in this case is whether the three-fourths mineral reservation in the deed from Respondent's predecessor in interest successfully reserved the one-half interest which he had at the time, or whether it somehow acted to reserve less than that one-half interest.

POINT I

APPELLANTS HAVE NOT MET THE BURDEN OF SHOWING THAT THE TRIAL COURT ERRED BY OVERCOMING THE PRESUMPTION OF VALIDITY FAVORING THE TRIAL COURT'S DECISION.

Appellants assign the error of the trial court as being one of "fact" on page 6 of their brief where they complain, "Had the lower court considered the conduct of the parties in arriving at its

---

[1]Appellant Hartman did offer evidence in the trial court in the form of testimony of Hartman on conversations with the deceased William M. Potter. That testimony was barred by the trial court with Appellant's acquiescence. Page 9 of the hearing transcript shows:

"The Court: Well as far as any of the evidence of the plaintiffs' getting in, Mr. Hisatake, that isn't going to occur under the Deadman's Statute. Don't you acknowledge that?

Mr. Hisatake: Yes."

conclusion as to the intent of the parties . . .". An error of fact in a suit in equity will lead to reversal only when the weight of the evidence is clearly against the facts as found by the trial court. Clotworthy v. Clyde, 1 U.2d 251, 265 P.2d 420 (1954).

Appellants assign as errors in the court below that (1) the deed should have been construed against the grantor, and (2) that it should be construed in favor of its fullest effect and against ambiguity. Far from overcoming the presumption that the trial court ruled correctly, the first of these arguments of law is clearly inapplicable under the law of Utah, as stated in Russell v. Geyser Marion Gold Mining Company, 18 U.2d 363, 423 P.2d 487 (1967) and Reese Howell v. Brown, et al., 48 Utah 141, 158 Pac. 684 (1916), while the second proposition of law actually favors Respondent. Both of these positions are more fully argued below.

This court defined the standard for overcoming the presumption of validity of a trial court's decision in Searle v. Searle, 522 P2d 697 (Utah, 1974):

> "The actions of the trial court are indulged with a presumption of validity, and the burden is upon appellant to prove such a serious inequity as to manifest a clear abuse of discretion." (footnote omitted)

Appellants have simply failed to meet this burden with the three conclusions reached in their brief, which are either inapplicab or contrary to their position.

The Decision in the District Court was rendered in Summary Judgment. Under Rule 56, Utah Rules of Civil Procedure, such judgment may be had where there is no genuine issue of material fact.

In this case cross motions for summary judgment were filed, supported by memoranda of each party relating consistent fact descriptions. No issue has been raised as to factual dispute, and the matter does not invite factual controversy. Thus the Summary Judgment was properly rendered and the presumption of its correctness properly supported.

POINT II

CONTRARY TO APPELLANTS' POSITION, THEIR ACT OF LEASING THE DISPUTED INTEREST IN THE MINERAL ESTATE DOES NOT STRENGTHEN THEIR CLAIM TO THAT INTEREST.

Appellants argue on page 6 of their brief that their entry into leasing arrangements "with various companies believing that they owned a one-fourth (1/4) interest to the oil, gas and mineral rights" evinces actual ownership of the minerals. The thrust of this argument is that a rule of construction -- that a conveyance should be construed to have the effect given it by the parties to it -- should be applied. This is a valid rule of construction, but Appellants would apply it only to a portion of the facts in this case. It is undisputed that Respondent also leased her one-half of the mineral rights that she believed (correctly, as the trial court found) that she owned. It is in fact Respondent's lease and the royalties paid Respondent thereunder that are the real subject matter of this law suit. In sum, these actions by the parties to the deed cancel each other out.

But there is more to this rule of construction (which actually favors Respondent's position) than the actions of the parties to

the deed, acting alone. Husky Oil Company and Chevron Oil Company have become involved in this lawsuit as co-defendants because of the effect they have given to the deed in question. It is not only undisputed, but was the substance of Appellants' complaint, that these companies, aged and experienced giants of the petroleum industry and well advised by their own legal staffs, have agreed with Respondent Potter in a most convincing way: by paying to her the full royalties attributable to her one-half mineral interest. The overwhelming weight of the treatment given the conveyance, by the greatest number and most knowledgable of those affected by it, favor Respondent Potter's ownership of one-half of the mineral estate.

Appellants misinterpret the cases cited in support of their position. In Wood, et al., v. Ashby, et al., 122 Utah 580, 253 P.2d 351, (1952), cited by Appellants, the court looked to the acts of the parties in giving practical effect to a deed. Plaintiffs in that case prevailed but it was Defendants' acts in giving practical effect to the deed, contrary to Defendants' own interest, that supported Plaintiffs' position. In so noting the court said:

> "The record reveals that defendants acted in such use of the strip with the permission of plaintiffs, and when interference with plaintiffs' rights resulted from such activities defendants upon demand were quick to rectify the situation."

253 P.2d at 354. Thus it was defendants' actions which gave effect to plaintiffs' rights.

In Garcia v. Garcia, 86 N.M. 503, 525 P.2d 863 (1974), also cited by Appellant, acts of both parties combined to give the effect found by the court. 525 P.2d at 865.

In White v. Brooks, 266 OR 506, 512 P.2d 1350 (1973), likewise cited by Appellant, it was the combined and cooperative efforts of all parties in constructing a driveway that gave effect to the contested deed.[2] All of these cases are distinguished from the instant case by the absence of any act or omission on the part of Respondent Potter that is in any way consistent with the ownership by her of less than one-half of the entire mineral estate.

Appellants' position is simply not supported by either the facts or the authorities cited. The decision of the trial court was grounded upon the "intent of the parties", as manifested by their acts and the language of the deed. The same arguments, based in part on Hartman's self serving "consistent actions", were considered and rejected by Judge Winder, who ruled that Respondent Potter was the legal owner of the entire one-half interest in the minerals. This Court has said that, when a trial court has looked to surrounding circumstances in construing a deed, "[The Utah Supreme Court] will not disturb [the trial court's] findings nor the judgment based thereon unless the weight of the evidence is clearly against them." Clotworthy v. Clyde, supra, 265 P.2d at 421. In the instant case the evidence clearly favors the trial court's decision and it should be affirmed.

POINT III

THE RULE THAT A DEED SHOULD BE CONSTRUED IN FAVOR OF THE GRANTEE AND AGAINST THE GRANTOR IS NOT APPLICABLE IN THIS CASE.

---

[2]Plaintiff's other case, Clotworthy v. Clyde, supra, merely states that a court may look to surrounding circumstances in construing a deed, a point with which Respondent wholeheartedly agrees.

The paramount rule of construction of deeds is that the intent of the parties governs. The rule merely favoring grantee, because he is the grantee, is a refuge of the last resort for a court with no other grounds on which to make a decision. In Russell v. Geyser - Marion Gold Mining Company, supra, a reservation of grazing rights was contested. Ruling in favor of the grantor of the contested deed, the Court said:

> "This rule of construction favoring grantees is one of the last rules of construction that should be applied and need not be resorted to so long as a satisfactory result can be reached by other more reliable rules. [23 Am. Jur. 2d §165.] Clearly such a rule of construction should be subordinate and yield to the paramount rule that the intent of the parties is to be given effect if it can be ascertained and if it does not contravene the clear meaning of the words in the grant."

423 P. 2d at 490. That holding was no novelty, having been adopted by this Court in 1916, in response to the same argument being made by Plaintiff here:

> "We have, however, held, and are firmly committed to the doctrine, that we will have recourse to every aid, rule, or canon of construction to ascertain the intention of the parties before having recourse to the rule of construing the language of the parties either most strongly against or in favor of either of them." (Citations omitted)

Reese Howell Company v. Brown, et al., 48 Utah at 149, 158 Pac. at 687.

In the instant case there are ample, inviting and preferable alternatives to the arbitrary rule which simply says that the grantee of a conveyance should be favored. The intent of the grantor to reserve his minerals (indeed, to reserve more than he even had) and

the actions of all parties taken together as argued above, make application of the arbitrary rule avoidable, as an undesirable last resort. This Court, in the cases cited above, has stated that it will avoid this arbitrary rule whenever possible.

POINT IV

CONSTRUCTION OF THE DEED IN FAVOR OF VALIDITY AND AGAINST AMBIGUITY FAVORS RESPONDENT POTTER.

Appellants argue that the expressed intent of the 1951 deed, to reserve a three-fourths mineral interest where only a one-half mineral interest remained in the grantor, created an ambiguity. The document itself is not ambiguous at all; only the circumstances raise a question. Respondent submits that there is no issue of "ambiguity", only of practical effect of the expressed intent of the document under these circumstances.

Appellant argues that the deed, which purports to reserve more than the grantor had, should be construed to reserve less than he had, in order to give the "most logical" interpretation to the instrument. The converse, however, was more convincing to the trial court (Hearing transcript page 4). If the grantor had reserved exactly one-half of the mineral estate there surely would have been no controversy; he would have reserved exactly what he had. But instead he reserved three-fourths, despite the fact that he only owned one-half. The nearest to the full meaning and intent of grantor that can be reached, as derived from the language, is to give it the fullest effect possible: reservation of the entire one-half mineral interest that he owned.

There is, by analogy, a Utah statute suggesting this same result:

> "§57-1-4. ATTEMPTED CONVEYANCE OF MORE THAN GRANTOR OWNS--EFFECT. -- A conveyance made by an owner of an estate for life or years, purporting to convey a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer."

This statute states a policy of giving the greatest effect to that which is attempted, when that which is attempted cannot be practically accomplished. As the statute applies to over-conveyances, it can likewise be applied to over-reservations. Any other result would deny consistency to the legislative policy behind the statute.

POINT V

APPELLANTS' ACTION WAS BARRED BY THE STATUTE OF LIMITATIONS.

It was argued at the hearing on cross motions for summary judgment that this action was barred by the Statute of Limitations (Hearing transcript page 9, lines 3-21). Floid Hartman, Appellant here and a grantee under the deed, states that he was aware that Potter owned less than the full mineral estate at the time the deed was delivered to him (Hartman Deposition, p. 24, line 17-22). He was also present at the preparation and signing of the deed (Hartman Deposition, p. 12, lines 9-10). He was thus on notice of any error or "ambiguity" such as he now alleges in the deed on June 27, 1951, the day the deed was executed (Hartman Deposition p. 5, line 11). Application of any of Utah's statutory limitations on actions would bar the cause having accrued on that date.

Beyond Appellants' actual notice of the prior conveyance of one-half of the mineral estate there is the clear policy of Utah's Recording Act, UCA 1953 §57-3-2, that all persons are put on notice at the moment a conveyance is recorded, therewith commencing the time period limiting any future actions. From the moment a person is put on such notice he has the duty to make his inquiries and objections, within that statutory period, if he is ever to do so. Smith v. Edwards, 81 U. 244, 17 P.2d 264 (1932), McConkie v. Hartman, 529 P. 2d 801 (Utah 1974). If Appellant wished to attack the reservation in the Potter deed as inconsistently reserving three-fourths of the minerals while Potter only owned one-half of the minerals he should have timely done so. He did not do so for 25 years and is now surely barred.

CONCLUSION

Appellants fail to meet the burden of overcoming the presumption that the trial court's decision is valid.

Appellants' first argument -- that the deed has been treated by them as conveying a mineral interest to them -- fails, because only they, in all the world, have so treated it. Respondent Potter has never, by act or omission, treated the deed as conveying an interest to Appellants. More significantly, Respondents Husky and Chevron have recognized Potter's mineral interest and paid the production royalties to her, and not to Appellants.

Appellants' second argument that the deed should be mechanistically construed against the grantor and in favor of the grantee --

does not apply where other and preferable means of construction can be employed. Such other and preferable means are available here and should be employed, consistent with this Court's stated policy.

Appellants' third argument -- that the deed should be construed in favor of validity and against ambiguity -- actually favors Respondent. There is no ambiguity, but if there is, the rule of construction gives greater effect to the language of the instrument to reserve one-half, where it purports to reserve three-fourths, than it would to reserve less than one-half.

Finally, Appellants' action was barred by any Utah Statute of Limitations that may be applied to it, since the cause against defendant Potter accrued in 1951, and Appellants were then aware of it. Twenty-five years passed thereafter, before this suit was filed.

In Utah a conveyance is construed in accordance with the intent of the parties as expressed in the document. Where the expressed intent is at odds with the factual situation, the court should adopt a result most nearly approximating the expressed intent within the constraints of the factual situation. This rule, applied to the instant case, would affirm the trial court by finding that the grantor in the 1951 deed actually reserved a one-half interest in minerals, rather than the three-fourths interest recited, because this result most nearly approximates the intent expressed in the document within the constraints of the factual situation.

For the reasons stated Respondent asks that the well reasoned and correct decision of the trial court be affirmed.

Respectfully submitted this 24 day of November, 1978.

ROBERT G. PRUITT, JR.

THOMAS A. NELSON
Attorneys for Defendant - Respondent

CERTIFICATE OF SERVICE

I certify that true and correct copies of the foregoing were this day deposited postage paid in the United States mails addressed to Kenneth M. Hisatake, 1825 South 700 East, Salt Lake City, Utah, 84105.

Dated this 24th day of November, 1978.